



Federal Communications Commission
Washington, D.C. 20554

January 14, 2008

DA 08-86

University of California, Davis
Business Contracts Department
202 Cousteau Place, Suite 205
Davis, CA 95618-7761
Attn: Arthur R. Silen

Re: Waiver of Section 90.259(a)(3) of the Commission's Rules

Dear Mr. Silen:

This letter responds to your July 24, 2007 letter on behalf of the University of California, Davis (UC Davis) regarding operation of a wireless audience response system—consisting of a radio transceiver unit and fifty hand-held broadcasting keypads for transmitting audience responses—on frequency 216.0125 MHz.¹ You indicate that UC Davis has been using the system without a Commission license, and that the Commission's Universal Licensing System will not permit you to file an appropriate application. For the reasons set forth below, we hereby grant UC Davis a waiver of Section 90.259(a)(3) of the Commission's rules² to permit the filing of an application for a new license for the system.

By way of background, the 216-217 MHz band previously was available to Part 90 Industrial/Business Pool licensees for telemetering operations, and was shared on a secondary basis by the Part 95 Low Power Radio Service (LPRS).³ In 2002, however, the Commission elevated the LPRS from secondary to primary status.⁴ Consequently, the Commission prohibited new applications for non-LPRS operations in the band in order to protect LPRS operations from interference, but it grandfathered incumbent telemetering licensees.⁵ The prohibition on new applications is codified in Section 90.259(a)(3).

You state that UC Davis purchased a low-power radio frequency system for obtaining and tabulating audience participation and opinion approximately ten years ago, but inadvertently failed to file a license application. As a result of recent attempts to license the system, UC Davis discovered that no applications for new 216-217 MHz band frequency assignments are being accepted.

¹ Letter from Arthur R. Silen, Analyst, University of California, Davis to Office of the General Counsel, Federal Communications Commission dated July 24, 2007.

² 47 C.F.R. § 90.259(a)(3).

³ See 47 C.F.R. §§ 2.106, 90.259, 95.629 (2001).

⁴ Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, *Report and Order and Memorandum Opinion and Order*, ET Docket No. 00-221, 17 FCC Rcd 368, 377 ¶ 19 (2002).

⁵ *Id.* at 380 ¶ 26 (“While it would not be equitable to force incumbent operations to relocate, we believe that we should no longer accept new applications in order to protect LPRS devices.”).

You ask whether a license is still required for the system, or whether UC Davis may use the system without a license pursuant to the LPRS rules. We conclude that the system may not be operated pursuant to the LPRS rules, because audience response reporting is not currently one of the permissible uses of LPRS frequencies.⁶

We note that UC Davis would be authorized to operate the system if it had submitted an application when it first purchased the system, and its license would be grandfathered and renewable indefinitely. We also note that we have received no complaints of interference to LPRS operations attributable to UC Davis's system.⁷ Consequently, on our own motion, we grant UC Davis a waiver pursuant to Section 1.925 of the Commission's rules,⁸ to permit UC Davis to file an application for a new license for the system. Under the circumstances presented, the underlying purpose of Section 90.259(a)(3) would not be served by denying UC Davis the opportunity to license its pre-2002 system.⁹

We note that our action here is without prejudice to further inquiry and action by the Commission's Enforcement Bureau in connection with UC Davis's unauthorized operation of the system.

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, Section 90.259(a)(3) of the Commission's rules, 47 C.F.R. § 90.259(a)(3), IS WAIVED to permit the University of California, Davis, to file an application for a new license to operate its existing audience response system on frequency 216.0125 MHz, and that such application SHALL BE PROCESSED in accordance with this action and the Commission's rules.

This action is taken under delegated authority pursuant Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ See 47 C.F.R. § 95.1009. We note that the equipment was type accepted only under Part 90, and is not approved for use under Part 95. See Grant of Equipment Authorization FBR5FKRSPTX-1 (Apr. 26, 1989).

⁷ Indeed, given that UC Davis presumably operates the system, which operates at quite low power, within an enclosed room on campus, any such interference would likely be only to UC Davis's own LPRS operations.

⁸ 47 C.F.R. § 1.925(b)(3).

⁹ Cf., e.g., Disneyland Resort, *Order*, 21 FCC Rcd 536, 539 ¶ 9 (WTB PSCID 2006) (granting waiver of filing freeze to permit application for new license for facility for which the license inadvertently was allowed to expire).